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May 28, 2015

**VIA ELECTRONIC TRANSMISSION**

The Honorable Allison C. Lerner  
Inspector General  
National Science Foundation  
4201 Wilson Boulevard,  
Arlington, VA 22230

Dear Ms. Lerner:

In September 2014, a whistleblower provided my office with information regarding an audit performed by the Defense Contract Audit Agency (DCAA) where it was discovered that the National Science Foundation (NSF) provided taxpayer money to grantees, such as the National Ecological Observatory Network (NEON), each year in the form of “management fees.” NEON used management fees to pay for unallowable and illegal costs such as alcohol, lavish parties, including a \$25,000 Christmas party, and lobbying.<sup>1</sup>

The Office of Management and Budget (OMB) issued a Controller Alert in April 2015 specifically on point to combat these types of expenditures. OMB stated that, “[a]gency policy or guidance also should include examples of inappropriate uses of management fees or profit such as purchase of alcoholic beverages, entertainment, meals for non-business purposes, membership dues for social or sporting clubs, and lobbying.”<sup>2</sup> In addition, OMB noted that, “[m]anagement fees should not be used to circumvent statutory or other limitations [...]”<sup>3</sup>

In its 2011 990 Form, NEON openly admitted it was engaged in lobbying and reported lobbying expenditures of \$86,000.<sup>4</sup> In FY 2013, NEON’s own budget reported that it spent \$112,000 for explicitly labeled “lobbying contract[s].”<sup>5</sup> According to Open Secrets, NEON has paid registered lobbyists \$340,000 over the past four years.<sup>6</sup> Importantly, NEON’s privately

<sup>1</sup> NEON, “C-10b Management Fee Expenditure Detail for FY 2013.”

<sup>2</sup> Controller Alert, Management Fees or Profit under Federal Assistance Awards, (April 2015). Accessible at <https://cfo.gov/wp-content/uploads/2015/04/CONTROLLER-ALERT-Management-Fees-or-Profit-under-Federal-Assistance-Awards.pdf>

<sup>3</sup> *Id.*

<sup>4</sup> NEON Inc., OMB No 1545-0047, Form 990 (2011); ProPublica, “National Ecological Exploratory Network, Inc., Form 990 Returns, by Year,” <http://projects.propublica.org/nonprofits/organizations/204510571>.

<sup>5</sup> NEON, “C-10b Management Fee Expenditure Detail for FY 2013.”

<sup>6</sup> OpenSecrets.org: Center for Responsive Politics, “Annual Lobbying by National Ecological Observatory Network,” <http://www.opensecrets.org/lobby/clientsum.php?id=D000064931&year=2013>.

funded donations from non-taxpayer funded sources in 2011 were only \$57,000. Lobbying expenditures in that same time period were \$86,000.<sup>7</sup> This appears to be clear evidence that NEON spent taxpayer funds on lobbying in violation of the Byrd Anti-Lobbying Amendment:

None of the funds appropriated by any Act may be expended by the recipient of a Federal contract, grant, loan, or cooperative agreement to pay any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress [...].”<sup>8</sup>

In addition, the Anti-Deficiency Act (ADA) prohibits “[a]n officer or employee of the United States Government or the District of Columbia government from mak[ing] or authoriz[ing] an expenditure or obligation exceeding an amount available in an appropriation.”<sup>9</sup>

Further, the Department of Justice Office of Legal Counsel (DOJ OLC) has touched on this subject in a 2007 legal opinion.<sup>10</sup> In that opinion, DOJ OLC provided a few examples of violations such as when an agency spends funds in “excess” of an amount authorized by an appropriation act; spends funds contrary to a “condition” contained in the appropriation act; or spends funds over an “internal cap” contained in the appropriation act.<sup>11</sup> The law is clear: federal funds cannot be used to pay for lobbying. And yet, that is exactly what happened here.

Violation of the ADA may result in a criminal penalty of up to two years in imprisonment, and a fine of up to \$5,000,<sup>12</sup> administrative discipline,<sup>13</sup> and a requirement to report the violations to the President and Congress.<sup>14</sup> Thus far, neither NSF nor NSF OIG has taken proactive measures to report violations to the President or Congress. Moreover, neither NSF nor NSF OIG has made any referrals to the Department of Justice (DOJ).

Accordingly, please answer the following:

1. Have you investigated to determine whether the use of taxpayer funds for lobbying was a violation of the Byrd Amendment and the ADA? If not, why not?
2. Have you determined whether you or NSF ought to report the potential ADA violation to the President and/or Congress? Do you have any plans to do so? If not, please explain why not.

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<sup>7</sup> ProPublica, "National Ecological Exploratory Network, Inc., Form 990 Returns by Year." Accessible at <http://projects.propublica.org/nonprofits/organizations/204510571>

<sup>8</sup> 31 U.S.C. § 1352(a)(1).

<sup>9</sup> 31 U.S.C. § 1341(a)(1)(a).

<sup>10</sup> *Use of Appropriated Funds to Provide Light Refreshments to Non-Federal Participants at EPA Conferences*, 2007 WL 3374332.

<sup>11</sup> *Id.*

<sup>12</sup> 31 U.S.C. § 1350.

<sup>13</sup> 31 U.S.C. § 1349.

<sup>14</sup> 31 U.S.C. § 1351.

3. Have you consulted with the Government Accountability Office regarding the potential ADA violation? Do you have any plans to do so? If not, please explain why not.
4. What steps have you taken to ensure that NSF no longer funds lobbying activities? Please explain in detail your recommendations to NSF and the extent to which NSF agrees with and is implementing them.

Please number your responses according to their corresponding questions. Please respond no later than June 11, 2015. If you have any questions, please contact Josh Flynn-Brown of my Committee staff at (202) 224-5225. Thank you for your cooperation in this important matter.

Sincerely,



Charles E. Grassley  
Chairman  
Committee on the Judiciary